



October 26, 2000

Ms. Laura Garza Jimenez  
Nueces County Courthouse  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2000-4164

Dear Ms. Jimenez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 140679.

The Nueces County Sheriff's Department (the "county") received a request for copies of any written policy concerning use by jail personnel of the inmate restraint chair. The requestor also seeks access to a restraint chair to inspect and photograph. The county asks whether the request for access to a restraint chair is a request for "public information" under the Act. You also claim that the information responsive to the first part of the request, a document titled "Restraint Chair Policies and Procedures," is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and the exception you claim and reviewed the submitted information.

The county asserts that the request for access to a restraint chair is not a request for "public information" as that term is defined by the Act. Section 552.002 of the Government Code states:

(a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

(b) The media on which public information is recorded include:

- (1) paper;
- (2) film;

- (3) a magnetic, optical, or solid state device that can store an electronic signal;
- (4) tape;
- (5) Mylar;
- (6) linen;
- (7) silk; and
- (8) vellum.

(c) The general forms in which the media containing public information exist include a book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

Additionally, this office generally holds that tangible items are not “information” within the Act. Therefore, based upon the definition set forth in section 552.002, we do not believe that a request for access to an inmate restraint chair constitutes a request for “information” under the Act. As such, the Act is inapplicable and we need not address the issue of access to the restraint chair.

We now address the county’s argument concerning the “Restraint Chair Policies and Procedures.” Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation is pending.

You supplied this office with copies of both an Original Petition and Complaint in Intervention that has been filed against the county. Thus, the county has demonstrated that litigation is pending. Further, we find that the requested documents are directly related to pending civil litigation. Thus, you may withhold the requested information pursuant to section 552.103.<sup>1</sup>

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<sup>1</sup>Additionally, we note that the responsive information does not fall within the types of information contemplated by the Legislature in section 552.022(a)(14). The submitted manual, in our opinion, is not “administrative” in nature.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

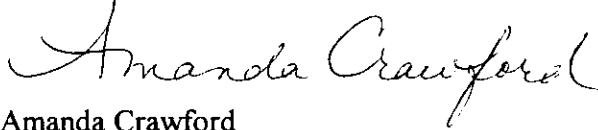
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford". The signature is written in black ink and is positioned above the printed name and title.

Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/er

Ref: ID# 140679

Encl: Submitted documents

cc: Mr. Guy H. Lawrence  
Corpus Christi Caller Times  
P.O. Box 9136  
Corpus Christi, Texas 78469  
(w/o enclosures)